is for transport expenses to and from the General Hospital; this was incurred by the parents of the plaintiff. I disallow this item. The second item of $48 is for the plaintiff's transport expenses to and from the General Hospital during the period that he was an outpatient. I allow this item. The third item of $100 is for nourishing food; the medical evidence was that the plaintiff did not require nourishing food. I disallow this item. The fourth and fifth items of $160 and $80 are for the wages and food of a servant employed to look after the plaintiff for two months. I do not think that a full time servant was necessary to look after the plaintiff; a little servant girl would have been sufficient for the purpose. I reduce the two items to $100. In the result I award the plaintiff $148 as special damages.

Now I come to the question of general damages. The plaintiff sustained the following injuries (1) a bruise on the right side of the face with swelling of the right eye (2) a lacerated wound on the right forearm and (3) a fracture of the right femur. He was unconscious for three days and he was in hospital for about one month and attended the General Hospital as an outpatient for a period of another month. His leg was in plaster of Paris for a period of twenty days. The plaintiff claims general damages (a) for pain and suffering and shock and (b) for general disability. The plaintiff's father said in evidence that the plaintiff after the accident became absent minded but no medical evidence was called to substantiate this. I therefore make no award on the claim for "general disability". After reviewing the medical evidence relating to the plaintiff's injuries and after careful consideration I think that the appropriate sum to be awarded for general damages is $2,000.

I therefore award the plaintiff $2,148 damages against the defendant and the taxed costs of this action.

Judgment for the plaintiff.

Solicitors: *Chong Thutt Pitt & Co.; Rodyk & Davidson.*

Re SHRINE OF HABIB NOH

[O. C. J. (Taylor J.) August 14, 1956]

[Singapore — Originating Petition No. 17 of 1952]

Charity — Endowment — Muslim and Hindu Endowments Ordinance (Cap. 271) — Trust — Object of — Surplus income — Scheme for disposal of — Cy pres doctrine.

This was a petition under the Mohammedan and Hindu Endowments Ordinance (Cap. 175 of McElwaine Edn.) for approval of a scheme for the management of certain endowments. Habib Noh, who was regarded as a saint by the water-side community near the dock area of Tanjong Pagar, died in 1880 and was buried at the top of a small hill called Mount Palmer, and an elaborate domed structure resembling a mosque, with accommodation for a resident Imam, was erected over his tomb. In the same year the site of the shrine was conveyed to trustees "as and for wakaf of Habib Noh for ever," according to the Muslim law of the Shafei sect. At some time between 1880 and 1905 a massive iron chest with a slot in the lid was placed in the shrine to collect worshippers' contributions and votive gifts in money, and a deed of 1905 assured periodical payments of such collection upon the trusts of the deeds of 1880. Substantial funds continued to accrue from the moneys placed in the chest which exceeded the emoluments of the Imam and the costs of maintaining the shrine. It became usual to distribute much of the surplus to descendants of Habib Noh, without any regard to their financial position. Disputes arose which culminated in an Order made in 1936 directing that the endowment known as the wakaf of Habib Noh be administered by the then Mohammedan and Hindu Endowments Board. The Board being in doubt as to the objects to which the funds in question were applicable applied by this Petition for approval of a scheme for the disposal of a capital of about $50,000 and of the surplus income expected to accrue in the future.

Held: (1) the primary object of the trust was the maintenance of the shrine. As there had some time ago been a suggestion by the Government Architect that owing to the peculiar nature of the site it would be advisable to reinforce the foundation, the Board should put in hand forthwith the work suggested; the Board should also consider whether some money might be well spent on improving access to a small mosque adjoining the shrine for the benefit of both or for the greater convenience of persons visiting both;

(2) the Board ought also to guard against the risk of the shrine being destroyed or damaged by fire or tempest or landslip by setting aside a reserve fund to secure the means to make good the consequences of any such misfortune and to reduce recurrent expenditure in the future; this fund which should be double the amount of the estimated cost of reconstruction of the shrine should be laid out in the purchase of a suitable holding of income-producing land or other authorised security;

(3) any surplus remaining after these two main measures had been carried out should be applied for the relief of poverty amongst the descendants of Habib Noh and the balance applied to *cy pres* in the manner of spontaneous, rather than organised charity for the benefit of needy members of the class of persons to whom the donors belonged;

(4) the Court could not properly give directions as to the disposal of future income by means of a formal scheme and could only give an advisory opinion as to how this should be applied; in so far as money was required for the maintenance of the shrine its destination was obvious but surplus income should be disposed of by outright gifts to needy members of the class described.

ORIGINATING PETITION.

W. G. Alcock (Chairman of the Muslim and Hindu Endowments Board) for the petitioner.

M. J. Namazie and *Ahmad bin Mohamed Ibrahim* for the Muslim Advisory Board and the descendants of Habib Noh.

The written judgment of Taylor J. below was delivered on December 11, 1956 by Whitton J. who made a further order that the costs of the Board should be paid out of the Fund.

Taylor J. : — This is a petition under the Mohammedan and Hindu Endowments Ordinance for approval of a scheme for the management of certain endowments.

Habib Noh lived near the dock area of Tanjong Pagar in the third quarter of the nineteenth century and was regarded as a saint among the mixed, but predominantly Moslem, waterside community. Tradition has it that he used to tell stories and religious fables to children who gathered round him and that he would go to the shops and stalls, help himself to handfuls of sweets and biscuits and throw them to be scrambled for by his audience. He died about 1880 and was buried at the top of a small hill called Mount Palmer. An elaborate domed structure, resembling a small mosque, with accommodation for a resident Imam, was erected over the tomb and became a place of pilgrimage frequented not only by Moslems but also by people of other persuasions and of many races, both local and from surrounding countries, especially those desiring to make or fulfil vows. By a deed dated 10th August 1880 the site of the shrine was conveyed to a body of trustees "as and for the wakaf of Habib Noh, for ever, according to the Mohammedan law of the Mudthhap Shafei sect."

At some time between 1880 and 1905 a massive iron chest, with a slot in the lid, was placed in the shrine to collect worshippers' contributions and votive gifts in money. Chickens and other gifts in kind were often placed in the shrine and left at the disposal of the Imam.

By a deed dated 17th November 1905 the site of the steps giving access to the Shrine was assured to the successors of the trustees of 1880. By this deed the trustees of 1905 undertook to make periodical payments from the funds to be derived from the iron chest; they purported to secure those payments on such future funds and declared that they would hold the balance of such funds upon the trusts of the deed of 1880.

Funds of varying but substantial amount continued to accrue from the moneys placed in the chest and these greatly exceeded the emoluments of the Imam and the costs of maintaining the Shrine. It became usual to distribute much of the surplus to descendants of Habib Noh, without any regard to the question whether they were affluent or needy. Disputes and complaints of mismanagement arose; as a result an Order was made in 1936, under section 4 of the Ordinance, directing that "the Endowment known as the wakaf of Habib Noh be administered by the Board." From that date the Endowments Board have held the keys and have received the gross amount of the collections, paying the Imam and maintaining the Shrine. As the structure occupies the whole of the summit of a small but very steep hill the cost of repairs and maintenance has at times been substantial but over the years surpluses have accumulated and the Board now submit a scheme for the disposal of what has become a capital sum of about $50,000 and of the surplus income which is expected to accrue in the future. The Board are in doubt as to the objects to which the funds in question are applicable.

The descendants of Habib Noh and the Muslim Advisory Board obtain leave to attend the proceedings. The descendants claim that the surplus, or at least a substantial part of it, ought to be paid to them, irrespective of indigence. Counsel for the Advisory Board submitted that a large proportion should be applied in furtherance of secular education among local Moslems.

The main issue for the Court is to ascertain the true objects of the trust.

It is clear that the primary object to which the funds in question should be applied is the maintenance of the Shrine. Some time ago the Government Architect made a report, the gist of which is that the structure is, on the whole sound but that owing to the peculiar nature of the site it would be advisable to reinforce the foundations. This would cost a considerable amount and from the structural point of view it is not urgent but until it has been done it is not possible to ascertain the true amount of the surplus available for other purposes. The Board should therefore put in hand forthwith the work suggested by the Architect and also any additional work the desirability of which may be revealed when the foundations are opened or which may have become desirable since the report was made so as to make the structure as secure as possible and to minimise future maintenance.

There is a small mosque adjoining the Shrine. This is quite separate but in conjunction with the work already mentioned the Board should consider whether some money might be well spent on improving access to it for the benefit of both Shrine and Mosque or for the greater convenience of persons who may wish to visit both.

The Board ought also to guard against the risk of the Shrine being destroyed or damaged by fire or tempest or landslip. It used to be the policy of the Board not to insure sacred edifices against these perils. Whether this Shrine is now insured, does not appear but since the Board have, correctly or incorrectly, accumulated a substantial sum they should set aside part of it as a reserve fund to serve the double purpose of securing the means to make good the consequences of any such misfortune and reducing recurrent expenditure in the future. To determine the amount required, the Board should obtain an architect's estimate of the cost of complete reconstruction of the Shrine, in the event of destruction by exceptional misfortune, and double the estimate so as to provide for the possible increase in costs over a long period. The sum so

ascertained should be laid out in the purchase of a suitable holding of income-producing land or in some other authorised security. They would then be covered against risks to which an ordinary insurance policy might not extend, they would be relieved of any need to insure or to make reserves from future income and they would also have the income of the land or investment to make good any deficiency in ordinary income in any particular year when unusual conditions might cause the collections to fall below the recurrent expenditure.

These two measures, though substantial, would probably not exhaust the existing fund and in any event the question of future surpluses would remain. The duty of the Board is to carry out the intention of the donors, as nearly as practicable. It is therefore necessary to draw, from slender materials an inference as to the state of mind of those who place gifts in the iron chest.

A visitor to a sacred edifice is not necessarily a worshipper. He may not even belong to the religious persuasion to which the edifice is dedicated. Travellers of all religions visit notable temples and churches all over the world. Some of the donors in question are casual visitors and others are local residents. Probably Moslems predominate but nearly all religions are represented. Some of the donors come to fulfil vows. A person may promise that if he recovers from an illness, or on the happening of some other uncertain event, he will make a pilgrimage to the Shrine; he comes accordingly and as one of the incidents he makes a gift; his dominant motive is to perform the religious obligation. Others visit the Shrine for various reasons and make more casual gifts.

The descendants of Habib Noh submitted that some at least of the donors have invoked the aid of the saint who is commemorated and specifically intend or contemplate that his descendants shall benefit from their gifts, as do the descendants of certain other saints whose tombs are places of pilgrimage. This may well be true but effect cannot be given to it, apart from indigence, because it would not be a charitable purpose within the meaning of the relevant law. It was for that reason that the Shrine became vested in the Board; the trustees clearly cannot do the very thing which they were appointed to prevent. It is, however, proper that in applying part of the surplus to the relief of poverty they should take care to alleviate the sufferings of any descendants who may be in actual need.

The descendants opposed the suggestion that the fund should be applied to education on the ground that if the donors wished to further education they would give the money to a foundation with the object instead of putting it in the chest. This Cagative argument is not without force; the circumstances tend to counter the view that they intend to contribute to a specialised fund and their intention is the true issue.

We have here a fluctuating body of persons, of many races and religions, who make spontaneous gifts. It is clear that they have one intention in common; they all wish the shrine to be preserved for the future. Beyond that it is difficult to attribute to them any specific intention. They do not pause to enquire whether the collections exceed the cost of maintenance. They do not weigh pros and cons. It is highly unlikely that many of them give even a passing thought to the question of what will become of any surplus which may result. If that idea occurs to them they probably dismiss it with the reflection that the money will be given to charitable objects. They are deemed to have a general intention of charity and this must be carried out *cy pres*. The surplus should be applied in the manner of spontaneous, rather than organised, charity for the benefit of needy members of the class of persons to whom the donors belong. In so far as it is possible to define the class it is composed partly of people living in the vicinity, largely a waterside community, and partly of travellers, mainly travellers by sea. Probably Moslems predominate.

I fully appreciate the idea of the Advisory Board that the money, or a substantial part of it, could very usefully and beneficially be applied to education but that idea is based on erroneous reasoning. It is assumed that because the donors have a general intention of charity it is open to the trustees to consider the many objects which have, in various circumstances, been held to be charitable, in the legal sense, to choose the one which appears to them, at the present time, the most deserving and to convert a large part of the general surplus to that specific purpose. To particularise the general intention in that way would infringe the principle of carrying out the general intention as nearly as is practicable. It is highly unlikely that the idea that they were contributing to a fund applicable to educational purposes ever occurred to the donors. Also it would confine the beneficiaries to the children of local residents and exclude those of the travellers who are a substantial proportion of the relevant "class"

For all these reasons I am of opinion that after providing for the structural work and the reserve fund already described the Board should dispose of the moneys in hand by making outright, non-recurrent gifts for the benefit of sick and needy members of the class described, without distinction of race or creed but bearing in mind that indigent descendants are eligible and that Moslems predominate. To make this more explicit, they should consider the following objects and others of the same general nature.

There is, near by, a voluntary hospital, the St. Andrew's Mission Hospital where both in-patients and out-patients, especially children, receive free treatment. I believe that needy sick are treated without discrimination of race or creed. The Board should verify this and if it is correct they could make a gift by way of benefitting the local sick and poor. They should enquire what other provision there is for the care of sick and aged indigent persons in that area and make gifts, suitable to the need and with some regard to the probable proportion of beneficiaries of the class described. From time to time distress to both large and small numbers of persons is caused by accidents. For instance, a few years ago a local trade steamer foundered near Singapore and nearly all the crew perished, leaving many widows and children, a number of whom belonged not to Singapore but to the surrounding countries. The victims of that shipwreck were broadly representative of the class to which most donors to the Shrine belong. In such an event the Board should make immediate outright gifts, according to need. It is true that such dependants are eligible for other forms of relief, such as workmen's compensation, but those matters take time and the immediate need is acute. Also some of the victims very naturally desire to return to their home districts; passages on repatriation are expensive and often not covered by official schemes. The provision of passages, and a grant to assist in establishing a new home, would be a very suitable object of this fund. Broadly similar considerations apply to the victims of a fire among the rather poor houses in the vicinity of the Shrine. These examples are to illustrate, not to be an exhaustive list of, the objects of the trust. The Board are not to wait for a disaster of a specified kind. There is enough misery in the world and further misfortunes will always occur. The great merit of the donors is spontaneity. *Bis dat qui cito dat.* The great merit of this method is that the Board will be untrammelled by technical rules and formalities. They must observe the principles which have been mentioned and their gifts must be proportioned to real need. Subject to these factors, whenever a case of real need occurs among the sea-going or waterside people of the Mount Palmer area they should make an immediate grant.

As regards future income, I do not think that the Court can properly include directions for its disposal in a formal scheme. The Ordinance is, in some respects, obscure. The word "endowment" is defined as a gift of land or money but in some contexts the word is used as the equivalent of "foundation", a sense inconsistent with the definition. The Shrine itself is an endowment. If a visitor puts a five-dollar note in the box that money becomes an "endowment", within the meaning of the definition, and it is a separate endowment. It is not income of the primary endowment, within the meaning of the Ordinance. The trustees of 1906 were mistaken in thinking that they had any power to declare the trusts on which they, or their successors, would hold moneys which might or might not be spontaneously given in the future. The Order of the Governor did not, either in its terms or on its true construction, vest future collections in the Board. The position is that the Board, as trustees, inevitably come into possession of successive gifts of a mixed nature which they cannot immediately classify. In so far as the money is required for the maintenance of the Shrine its destination is obvious but such surpluses as arises are extraneous. The Court can, I think, give only an advisory opinion as to how these should be applied.

I think that the Board should dispose of them by outright gifts to needy members of the class described, treating such surpluses not as part of a permanent or continuous fund but as windfalls, to be disposed in different ways according to the varying needs of different years.

The measures already outlined will largely, if not entirely, solve the difficulty previously experienced in ascertaining the true surplus. Accounts are made up annually. The whole surplus, if any, appearing in the accounts for each year should be disposed of, in the manner suggested, during the next financial year.

To sum up, I am of opinion that the existing fund should be applied, first to the structural work mentioned, secondly to a reserve fund, as described, and the balance should be disposed of by way of dispersal grants to needy members of the class of persons described, and needy descendants of Habib Noh, and especially to such persons when in need of compassionate passages and rehabilitation grants; such gifts should preferably be to needy individuals direct but in order to disperse the accumulations without undue delay gifts to suitable institutions may be made.

The scheme must be amended so as to conform to this judgment.

I am of opinion that the Board may properly dispose of future surpluses by similar gifts.

Order accordingly.

Solicitors: *Mallal & Namazie.*